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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,577

05/31/2006

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05121321

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466 7590 09/12/2007
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EXAMINER

WISTERMAYER, ALEXIS M

ART UNIT

PAPER NUMBER

3709

MAIL DATE

DELIVERY MODE

09/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,577

Applicant(s)

BRIARD ET AL.

Examiner

Alexis M. Wisternmayer

Art Unit

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on January 31, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-15, and 17-19 is/are rejected.
- 7) ☒ Claim(s) 4, 16, and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/31/06.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5, 13, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "ball bearing" in line 3 of claim 5 refers back to rollers. Therefore, for purposes of further examination, "ball bearing" is interpreted as "roller bearing" as it appears to be shown in Figure 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3, 6, 8 through 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Overes et al (US PGPub 2002/0156480).

Regarding Claim 1: Overes et al. teach: a device/spreader apparatus comprising: at least one femoral insert/support plate having a condyle support surface (Figure 1 Element 3), a tibial insert/support plate (Figure 1 Element 2), and a means for applying a distraction force (Figure 1, adjustment mechanism 10).

Regarding Claims 3, 6, 8, and 15: Overes et al. teach a device/spreader apparatus: characterized in that the condyle support surface is provided with sliding means (Figure 1 Element 3, since the support plates do have the capability of sliding), that is also substantially cylindrical (Figure 2 area indicated by Element 2), and that a femoral insert/support plate and tibial insert/support plate are provided for each inner and outer compartment of the knee joint (Figure 1 Elements 2 and 3).

Regarding Claims 9 and 10: Overes et al. teach a device/spreader apparatus comprising a means for measuring the spacing of the condyle support surfaces and a means for measuring the distraction forces between the femoral and tibial inserts/support plates (Paragraph 24).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2, 12, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overes et al. in view of Martini (US Pat 6558392).

Regarding Claim 2: Overes et al. teach a similarly claimed device as stated in the rejections above.

Overes et al. does not teach a condyle support surface in the form of a dish.

Martini teaches a device having a dish/receptacle (Figure 1 Element 20). Overes et al.

and Martini are analogous art because they are from the same field of endeavor of distraction devices. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Martini's dish in Overes et al.'s device. The motivation would have been to offer an alternative and equivalent means of matching the shape of the knee joint, thereby seating it more easily, in order to distract it.

Regarding Claims 12 and 14: Overes et al. teach a device/spreader apparatus: characterized in that the condyle support surface is provided with sliding means (Figure 1 Element 3, since the support plates do have the capability of sliding), that is also substantially cylindrical (Figure 2 area indicated by Element 2), and that a femoral insert/support plate and tibial insert/support plate are provided for each inner and outer compartment of the knee joint (Figure 1 Elements 2 and 3).

Art Unit: 3709

Regarding Claim 18: Overes et al. does not teach a femoral insert having a maximum thickness less than or equal to 2.5 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the femoral insert have a maximum thickness less than or equal to 2.5 mm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. The motivation would have been to offer ease of inserting the distraction device into the joint. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 7, 11, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overes et al (US PGPub 2002/0156480).

Regarding Claims 7 and 19: Overes et al. teach a similarly claimed device as stated in the rejections above.

Overes et al. does not teach a femoral insert having a maximum thickness less than or equal to 2.5 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the femoral insert have a maximum thickness less than or equal to 2.5 mm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. The motivation would have been to offer ease of inserting the distraction device into the joint. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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Regarding Claim 11: Overes et al. teach a means for applying the distraction force comprising a force generation unit/adjustment mechanism (Figure 1 Element 10) and one branch connecting the generation unit/adjustment mechanism to the inserts (area indicated by Element 17 in Figure 1).

Overes et al. does not teach a pair of branches which connect the generation unit to the femoral and tibial inserts/support plates. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include two branches instead of one. The motivation would have been to offer an equivalent and alternative means of connecting the units. Official Notice is taken that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. Please see MPEP § 2144.04 Section VI B.

Allowable Subject Matter

Claims 4, 16, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach or render obvious the claimed subject matter as a whole comprising a tensioning device for a knee joint where the condyle support surface is formed by slidable side-by-side rollers.

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Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexis M. Wistermayer whose telephone number is 571-272-1197. The examiner can normally be reached on Monday - Friday 8 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMW 9/3/07



MARK EASHOO, PH.D.
SUPERVISORY PATENT EXAMINER

04/Sep/07